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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 BOH S.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

Case No. C18-918 MLP

ORDER AFFIRMING THE
COMMISSIONER

13
14 **I. INTRODUCTION**

15 Plaintiff seeks review of the denial of his application for Supplemental Security Income.
16 Plaintiff contends the administrative law judge (“ALJ”) erred in assessing medical opinions,
17 assessing Plaintiff’s testimony, and assessing lay witness testimony.¹ (Dkt. # 16.) As discussed
18 below, the Court AFFIRMS the Commissioner’s final decision and DISMISSES the case with
19 prejudice.
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22 ¹ Plaintiff alleges the ALJ erred in assessing lay witness testimony, however, he fails to present any
23 argument and has therefore waived this argument. *See Nw. Acceptance Corp. v. Lynnwood Equip., Inc.*,
841 F.2d 918, 923-24 (9th Cir. 1996) (party who presents no explanation in support of claim of error
waives issue); *see also Indep. Towers of Wash. v. Wash.*, 350 F.3d 925, 929 (9th Cir. 2003).

II. BACKGROUND

Plaintiff was born in 1985, has a GED, and has worked as a cook and stocker. AR at 319, 324, 329. Plaintiff was last gainfully employed in 2005. AR at 323.

On October 2, 2014, Plaintiff applied for benefits, alleging disability as of October 25, 1998.² AR at 15, 276. Plaintiff's application was denied initially and on reconsideration, and Plaintiff requested a hearing. AR at 187-90, 194-96, 200. After the ALJ conducted hearings on November 17, 2016 and January 26, 2017, the ALJ issued a decision finding Plaintiff not disabled. *Id.* at 15-33.

Utilizing the five-step disability evaluation process,³ the ALJ found:

Step one: Plaintiff has not engaged in substantial gainful activity since October 2, 2014.⁴

Step two: Plaintiff has the following severe impairments: attention deficit hyperactivity disorder (ADHD); depressive disorder; anxiety related disorder vs. post-traumatic stress disorder (PTSD); cognitive disorder vs. neurocognitive disorder due to traumatic brain injury (TBI); drug and alcohol addiction; personality disorder; learning disorder vs. borderline intellectual functioning (BIF).

Step three: These impairments do not meet or equal the requirements of a listed impairment.⁵

Residual Functional Capacity: Plaintiff can perform medium work as defined in 20 CFR 416.967(c) including the ability to do the following: he can occasionally balance, stoop, kneel and crouch. He can never climb or crawl. He must avoid concentrated exposure to vibrations and hazards. He can perform simple, routine tasks and follow short, simple instructions. He can do work that needs little or no judgment, and perform simple duties that can be learned on the job in a short period. He requires a work environment with minimal supervisor contact ("Minimal contact" does not preclude all contact, rather it means contact does not occur regularly. "Minimal contact" also does not preclude simple

² The ALJ found Plaintiff's alleged onset date was within a previously adjudicated period for prior disability applications. AR at 15. The ALJ found the prior determinations were administratively final and declined to re-open the prior claims. *Id.* Accordingly, the ALJ found the alleged onset date to be May 9, 2014. *Id.*

³ 20 C.F.R. § 416.920.

⁴ The ALJ noted Plaintiff's updated earnings history showed his last reported income was in 2005, however, the ALJ found Plaintiff has not engaged in substantial gainful activity since October 2, 2013, the application date for SSI. AR at 18.

⁵ 20 C.F.R. Part 404, Subpart P. Appendix 1.

1 and superficial exchanges, and it does not preclude him from being in proximity to the
2 supervisor.) He can work in proximity to co-workers but not in a cooperative or team
3 effort. He requires a work environment that is predictable and with few work setting
4 changes. He requires a work environment without any public contact.

5 Step four: Plaintiff does not have any past relevant work.

6 Step five: As there are jobs that exist in significant numbers in the national economy that
7 Plaintiff can perform, Plaintiff is not disabled.

8 AR at 18-33.

9 As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the
10 Commissioner's final decision. AR at 3-7. Plaintiff appealed the final decision of the
11 Commissioner to this Court. (Dkt. # 16.)

12 **III. LEGAL STANDARDS**

13 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social
14 security benefits when the ALJ's findings are based on legal error or not supported by substantial
15 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a
16 general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the
17 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
18 (cited sources omitted). The Court looks to "the record as a whole to determine whether the error
19 alters the outcome of the case." *Id.*

20 "Substantial evidence" is more than a scintilla, less than a preponderance, and is such
21 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
22 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
23 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical
testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may

1 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*
2 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one
3 rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

4 IV. DISCUSSION

5 A. The ALJ Did Not Err in Evaluating Plaintiff’s Testimony

6 1. Legal Standards

7 It is the province of the ALJ to determine what weight should be afforded to a claimant’s
8 testimony, and this determination will not be disturbed unless it is not supported by substantial
9 evidence. A determination of whether to accept a claimant’s subjective symptom testimony
10 requires a two-step analysis. 20 C.F.R. § 416.929; *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th
11 Cir. 1996). First, the ALJ must determine whether there is a medically determinable impairment
12 that reasonably could be expected to cause the claimant’s symptoms. 20 C.F.R. § 416.929(b);
13 *Smolen*, 80 F.3d at 1281-82. Once a claimant produces medical evidence of an underlying
14 impairment, the ALJ may not discredit the claimant’s testimony as to the severity of symptoms
15 solely because they are unsupported by objective medical evidence. *Bunnell v. Sullivan*, 947 F.2d
16 341, 343 (9th Cir. 1991) (en banc); *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1988). Absent
17 affirmative evidence showing that the claimant is malingering, the ALJ must provide “clear and
18 convincing” reasons for rejecting the claimant’s testimony. *Burrell v. Colvin*, 775 F.3d 1133,
19 1136-37 (9th Cir. 2014) (citing *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012)). *See also*
20 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007).

21 When evaluating a claimant’s subjective symptom testimony, the ALJ must specifically
22 identify what testimony is not credible and what evidence undermines the claimant’s complaints;
23 general findings are insufficient. *Smolen*, 80 F.3d at 1284; *Reddick*, 157 F.3d at 722. The ALJ

1 may consider “ordinary techniques of credibility evaluation,” including a claimant’s reputation
2 for truthfulness, inconsistencies in testimony or between testimony and conduct, daily activities,
3 work record, and testimony from physicians and third parties concerning the nature, severity, and
4 effect of the alleged symptoms. *Thomas*, 278 F.3d at 958-59 (citing *Light v. Social Sec. Admin.*,
5 119 F.3d 789, 792 (9th Cir. 1997)).

6 2. *The ALJ Provided Several Clear and Convincing Reasons for Discounting*
7 *Plaintiff’s Testimony*

8 Plaintiff alleges the ALJ erred in assessing his testimony by merely asserting a generic
9 statement that Plaintiff’s symptoms are not consistent with the record. (Dkt. # 16 at 2-3.) The
10 Court finds Plaintiff’s argument unpersuasive as it ignores the multiple legally sufficient reasons,
11 with specific examples, for discounting Plaintiff’s testimony provided by the ALJ after his
12 alleged generic statement.

13 With regard to Plaintiff’s mental health, the ALJ found the record was inconsistent with
14 Plaintiff’s allegations that he lacked the concentration and memory required to complete even
15 routine tasks. AR at 23, 59-61. The ALJ noted that on a mental status exam, Plaintiff was on
16 time, dressed appropriately, had adequate hygiene and grooming, and had fluid and purposeful
17 motor movements. *Id.* at 23, 681. Plaintiff spoke clearly, was cooperative, had normal affect,
18 good fund of knowledge, and made good eye contact. *Id.* The ALJ also noted that when Plaintiff
19 complied with mental health treatment, he made progress. *Id.* at 23, 486-90. Further, the medical
20 records consistently reported that Plaintiff was alert, oriented x3 or x4, had appropriate mood and
21 affect, and had an intact memory. *Id.* at 23, 460, 484, 567, 650, 663, 688-89. The ALJ reasonably
22 considered inconsistencies between Plaintiff’s testimony and the record. *See Tonapetyan v.*
23 *Halter*, 242 F.3d 1144, 1148 (9th Cir.2001) (ALJ appropriately considers inconsistency with the
evidence and a tendency to exaggerate in rejecting a claimant’s testimony).

1 The ALJ also found other inconsistencies between Plaintiff's testimony and the record
2 reduced the persuasiveness of Plaintiff's allegations. AR at 23. The ALJ noted Dr. Owen J.
3 Bargreen's report stated that he had "some concern" regarding Plaintiff's self-reporting because
4 Plaintiff stated he had not been intoxicated for twelve years, yet later stated he had three shots of
5 whiskey a few days prior. *Id.* at 471. The ALJ also noted Plaintiff had conflicting testimony
6 regarding paying rent. *Id.* at 24. The ALJ further found Plaintiff's allegations regarding back
7 pain were inconsistent with the Cooperative Disability Investigation Unit investigator's
8 observations of Plaintiff riding a bicycle. *Id.* at 447. The ALJ found Plaintiff worked as a
9 handyman, performed yard work, and assisted his disabled roommate which were inconsistent
10 with his allegations of severe impairment. *Id.* at 24, 503, 514, 648-49, 662, 693.

11 Accordingly, the ALJ properly identified several clear and convincing reasons, supported
12 by substantial evidence, for discounting Plaintiff's testimony.

13 **B. The ALJ Did Not Err in Evaluating Medical Opinion**

14 1. *Legal Standards for Evaluating Medical Opinion*

15 As a matter of law, more weight is given to a treating physician's opinion than to that of a
16 non-treating physician because a treating physician "is employed to cure and has a greater
17 opportunity to know and observe the patient as an individual." *Magallanes*, 881 F.2d at 751; *see*
18 *also Orn*, 495 F.3d at 631. A treating physician's opinion, however, is not necessarily conclusive
19 as to either a physical condition or the ultimate issue of disability, and can be rejected, whether
20 or not that opinion is contradicted. *Magallanes*, 881 F.2d at 751. If an ALJ rejects the opinion of
21 a treating or examining physician, the ALJ must give clear and convincing reasons for doing so
22 if the opinion is not contradicted by other evidence, and specific and legitimate reasons if it is.
23 *Reddick*, 157 F.3d at 725. "This can be done by setting out a detailed and thorough summary of

1 the facts and conflicting clinical evidence, stating his interpretation thereof, and making
2 findings.” *Id.* (citing *Magallanes*, 881 F.2d at 751). The ALJ must do more than merely state
3 his/her conclusions. “He must set forth his own interpretations and explain why they, rather than
4 the doctors’, are correct.” *Id.* (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)).
5 Such conclusions must at all times be supported by substantial evidence. *Reddick*, 157 F.3d at
6 725.

7 2. *Dr. Bridget C. Cantrell, Ph.D.*

8 The ALJ considered Dr. Cantrell’s opinion and gave it slight weight. AR at 28. The ALJ
9 found her opinions that Plaintiff has marked mental limitations and a GAF score of 38 directly
10 conflicted with Plaintiff’s daily routine and work activity. *Id.* at 28, 741-44. As an example, the
11 ALJ cited to Plaintiff’s report that he has “melt downs” where he “gets very much out of
12 control...yells and rages when he gets overly frustrated...does his best not to break things,” and
13 engages in “self-harm behaviors by hitting his head on surfaces and by running into walls,”
14 which the ALJ found conflicted with his ability to work as a handyman. *Id.* at 28, 741. An ALJ
15 may discount a medical source opinion to the extent it conflicts with the claimant’s daily
16 activities. *Morgan v. Comm’r of Soc. Sec.*, 169 F.3d 595, 601–02 (9th Cir. 1999). As discussed
17 above, in addition to working odd jobs as a handyman, Plaintiff also did yard work, rode
18 bicycles, and cared for his disabled roommate. This was a specific and legitimate reason to give
19 Dr. Cantrell’s opinion slight weight.

20 The ALJ also found Dr. Cantrell’s opinion relied heavily on Plaintiff’s subjective
21 allegations, and that it appeared Plaintiff withheld his work activity from Dr. Cantrell. AR at 28.
22 The ALJ noted that he considered Plaintiff’s GAF score, but gave it little to no weight because it
23 was based on Plaintiff’s subjective reports regarding his impairments rather than an objective

1 analysis. *Id.* An ALJ may reject a medical source’s statement opinion if it is “based ‘to a large
2 extent’ on a claimant’s self-reports that have been properly discounted as incredible.”
3 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (citations omitted); *see also*
4 *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997) (“Inasmuch as the ALJ found that
5 Sandgathe’s self-reports were exaggerated, the ALJ determined that Dr. Hayes’ report was
6 unreliable as well.”). As discussed above, the ALJ properly discounted Plaintiff’s symptom
7 testimony and could therefore properly discount Dr. Cantrell’s opinion as well to the extent she
8 relied on Plaintiff’s self-reports which the ALJ has given little weight.

9 Accordingly, the ALJ properly identified several specific and legitimate reasons,
10 supported by substantial evidence, for giving Dr. Cantrell’s medical opinion slight weight.

11 V. CONCLUSION

12 For the foregoing reasons, the Commissioner’s final decision is **AFFIRMED** and this
13 case is **DISMISSED** with prejudice.

14 Dated this 5th day of June, 2019.

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17 MICHELLE L. PETERSON
18 United States Magistrate Judge
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